

# Annual Report



2010-2011

# LETTER TO THE ATTORNEY GENERAL



## British Columbia Human Rights Tribunal

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July 15, 2011

Honourable Barry Penner, Q.C.  
Attorney General  
Province of British Columbia  
Room 232  
Parliament Buildings  
Victoria, BC V8V 1X4

Dear Attorney General:

It is my pleasure to present the eighth Annual Report from the BC Human Rights Tribunal, covering the period April 1, 2010, to March 31, 2011.

This report has been prepared in accordance with section 39.1 of the *Human Rights Code*.

Yours truly,

A handwritten signature in black ink, appearing to read "Bernd Walter".  
Bernd Walter,  
Acting Chair

BW/l

Enclosure

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## MESSAGE FROM THE CHAIR

### MESSAGE FROM THE CHAIR

It is my honour, in introducing the Tribunal's Annual Report for the 2010-2011 fiscal year, to provide my thoughts and reflections on the past seven months.

In July of 2010, I learned that the tenure of Heather MacNaughton, the Tribunal's highly respected Chair, was to expire. I was asked by then Attorney General, the Honourable Michael de Jong, to serve as Acting Tribunal Chair for a term of six months, from August 1, 2010, while also maintaining my duties as Chair of the British Columbia Review Board.

On my arrival, I found the Tribunal to be facing a number of pressing challenges. On the workload front, the volume of inquiries, processing and case management of incoming complaints, interim applications, demands for mediations, scheduling of hearings and decision writing, was matching that of previous years.

Adding to workload pressures, the Tribunal had lost a full-time Member due to resignation in March 2010.

The burden on remaining members was further intensified by the departure of the Chair and the expiry of the appointment of another valued and long-serving Member.

The Tribunal's case management and inquiry operations were equally beset by staff shortages.

Superimposed on these pressures, the Tribunal itself was the subject of speculation and rumours about its future, the origins of, or rationale for which, were unclear. The Tribunal took the opportunity to develop, submit and publish its own perspectives on the matter, in a paper presented to the BC Law Institute: [http://www.bchrt.gov.bc.ca/news/BCLI\\_BRIEF\\_OCT\\_5\\_2010.pdf](http://www.bchrt.gov.bc.ca/news/BCLI_BRIEF_OCT_5_2010.pdf)

Despite these conditions, I have had the good fortune, indeed the privilege, to join a high-functioning workplace, comprised of committed professionals, working to their utmost capacity. They are, every one of them, the face and heart of the Tribunal. They have been, without exception, gracious and welcoming. They are public servants in the very best sense of that phrase!

Since August, the Tribunal has taken steps to fill vacancies at the inquiry and case management levels. Two new Case Managers and an Inquiry Officer have been hired.

To cope with the intense demand on the remaining Tribunal Members, who preside at hearings, write interim and final decisions, and also conduct settlement meetings and mediations throughout the Province, funds were re-allocated to retain mediators on a contractual basis.

Nevertheless, the recent loss of Members, as well as a further resignation, has effectively left the Tribunal short of experienced adjudicators to deal with demand.

With the assistance of Tribunal Counsel and the consistent support of the Board Resourcing and Development Office, we were able to accelerate the member screening and appointment process. This has resulted in the appointment, in January 2011, of a new, highly qualified, full-term Member. A second Member joined the Tribunal in early March on a six-month term. Welcome additions indeed!

I have also considered it part of my mandate to participate in the eventual recruitment of a permanent Tribunal Chair; an individual with human rights credibility and the leadership skills to inspire continued public pride in, and to maintain the credibility of, the Tribunal, and also to lead its future development. Identifying and selecting that new leader remains a

## MESSAGE FROM THE CHAIR

work in progress, pending which, I have been asked and have agreed to remain in the office until August 1, 2011.

Looking to the future, and without purporting to bind a future Chair, I would like to share my own brief observations about potential future directions for the Tribunal.

After a period of eight years, spanning initial implementation of the new direct access model to its current level of maturation, under excellent leadership, it would in my view, benefit the Tribunal to undertake an orderly review of its policies, procedures and systems at a number of levels including:

- Streamlining and simplifying its forms and documentary processes, with an emphasis on electronic document processing and exchange.
- Undertaking a comprehensive review of the Tribunal's Rules of Practice and Procedure with a view to streamlining and ease of use.
- Reviewing its intake, screening and case management processes, including additional staff training for consistency, and the updating of electronic case management systems/architecture.
- Reconsidering the complexity and formality of interim proceedings and resulting decisions.
- Re-examining the hearing process including the length and formality of hearings and decisions.
- Considering amendments to the *Code* and/or the *Administrative Tribunals Act* to bring greater certainty and finality to the Tribunal's decisions thereby reducing the volume of resource intensive Judicial Reviews.

I offer these observations on the basis of my own experience in policy development and legislative reform in a number of provinces. In my view any program or statute, however well functioning, can, after a decade of operation, benefit from a rigorous process of review, considering and utilizing its operational history, stakeholder/consumer experience and jurisprudence in order to re-assess its adherence to core principles and values and to evaluate its relevance and responsiveness to those it is intended to serve.

British Columbia is indeed fortunate that any future changes that may be contemplated have the benefit of the sound and effective foundation which has been established for the BC Human Rights Tribunal.



Bernd Walter,  
Acting Chair

# TRIBUNAL MANDATE AND PURPOSES

## TRIBUNAL MANDATE AND PURPOSES

The Tribunal is an independent, quasi-judicial body created to fulfill the purposes set out in section 3 of the *Human Rights Code*:

- a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- c) to prevent discrimination prohibited by this *Code*;
- d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this *Code*;
- e) to provide a means of redress for those persons who are discriminated against contrary to this *Code*.

The Tribunal was established in 1997. It was continued as a standing adjudicative body pursuant to March 31, 2003 amendments to the *Code*, which instituted a direct access model for human rights complaints. Its authority and powers are set out in the *Code*.

The direct access model is complainant driven. The Tribunal does not have investigatory powers. Complaints are filed directly with the Tribunal which is responsible for all steps in the human rights process. On receipt, the complaint is reviewed to see that the information is complete, the Tribunal appears to have jurisdiction over the matters set out in it, and the complaint is filed within the six-month time period set out in the *Code*. If it is accepted for filing, the Tribunal notifies the respondents of the complaint and they file a response to the allegations of discrimination. Unless the parties settle the issues, or a respondent successfully applies to have the complaint dismissed, a hearing is held and a decision

about whether the complaint is justified is rendered.

The Tribunal's office and hearing rooms are located in Vancouver, although the Tribunal conducts hearings and settlement meetings throughout the Province. The Tribunal manages its staff, budget and physical facilities, and engages its own consultants and specialists. Pursuant to the *Code*, the Tribunal has developed rules to govern its practice and procedure. Its registry function is managed by a Registrar who is a lawyer.

Some complainants and respondents may access government-funded legal assistance to participate in the human rights process. The provincial government allocates funding to other organizations to provide these services.

# INQUIRY AND COMPLAINT STATISTICS

## INQUIRY STATISTICS

General inquiries about the Tribunal process are answered by two Inquiry Officers. Inquiry Officers also provide basic information about the *Code*'s protections and refer callers to appropriate resources. A toll-free number enables callers throughout the province to access the Inquiry Officers.

This year, the Tribunal responded to 9,472 inquiries, averaging 38 calls daily.

## NEW COMPLAINTS

The Tribunal reviews all complaints to ensure that the forms are complete, that the complaint is within provincial jurisdiction, and that the complaint includes sufficient information to set out a possible contravention of the *Code*.

In the 2010/2011 year, the Tribunal received 1,163 complaints. 335 (29%) of those complaints were screened out at the initial screening stage.

The Tribunal accepted 828 (71%) complaints for filing.

## CLOSED CASES

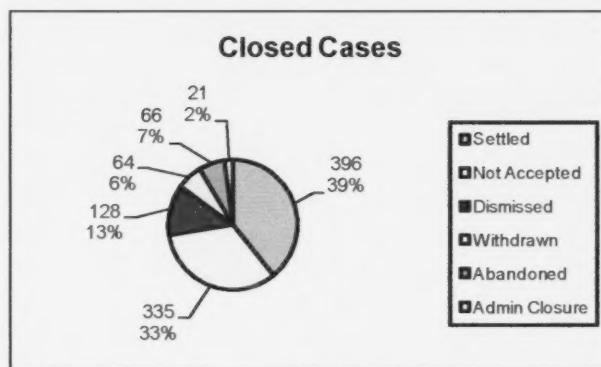
Cases are closed when they are not accepted at the initial screening stage, withdrawn because they have settled or otherwise, abandoned, dismissed, or a decision is rendered after a hearing.

In 2010/2011:

- 1,010 cases were closed;
- 335 complaints were not accepted at the screening stage;
- 80 complaints were dismissed under section 27;

- 31 complaints were dismissed under section 22;
- 38 decisions were rendered after a hearing (18 successful; 20 dismissed); and
- 565 complaints were settled, withdrawn or abandoned.

The Tribunal has changed the way that it records complaints which are the subject of judicial review applications. This may marginally affect some of the statistics reported in this year as compared to earlier years.



# INQUIRY AND COMPLAINT STATISTICS

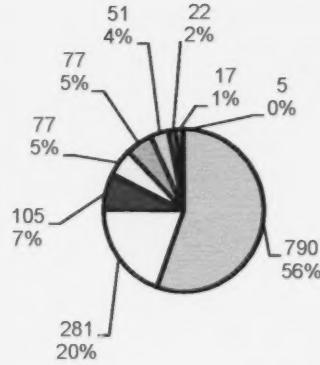
## AREAS OF DISCRIMINATION

The *Code* prohibits discrimination in the areas of employment, employment advertisements, wages, services, tenancy, purchase of property, publication and membership in unions and associations. It also prohibits retaliation against a person who makes a complaint under the *Code*. As a result of a BC Supreme Court decision in *Cariboo Chevrolet Pontiac Buick GMC v. Becker*, 2006 BCSC 43, the ground of retaliation only applies after a human rights complaint has been filed.

## AREAS CITED MOST FREQUENTLY

- employment 55%
- services 20%
- discriminatory publication 7%
- tenancy 5%
- retaliation 5%

**Areas of Discrimination Cited**



- Section 13 Employment
- Section 8 Services
- Section 7 Publications
- Section 10 Tenancy
- Section 43 Retaliation
- Section 14 Associations
- Section 12 Equal Pay
- Section 11 Advertising
- Section 9 Property

## GROUNDS OF DISCRIMINATION

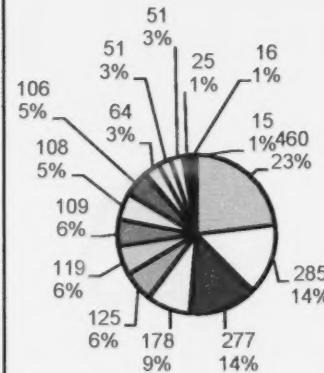
There are 15 prohibited grounds of discrimination: age (19 and over), ancestry, colour, family status, lawful source of income, marital status, place of origin, physical and mental disability, political belief, race, religion, sex (including harassment and pregnancy), sexual orientation, and unrelated criminal conviction. Not all grounds apply to all areas.

Some complaints cite more than one area and ground of discrimination. For instance, a complainant with a race-based complaint may also select grounds of ancestry, colour and place of origin.

## GROUNDS CITED MOST FREQUENTLY

- physical disability 23%
- sex (including harassment and pregnancy) 14%
- mental disability 14%
- race 9%
- place of origin and age 6%

**Grounds of Discrimination Cited**



- Physical Disability
- Sex
- Mental Disability
- Race
- Place of Origin
- Age
- Family Status
- Colour
- Ancestry
- Religion
- Sexual Orientation
- Marital Status
- Political Belief
- Criminal Conviction
- Source of Income

# SETTLEMENT MEETINGS

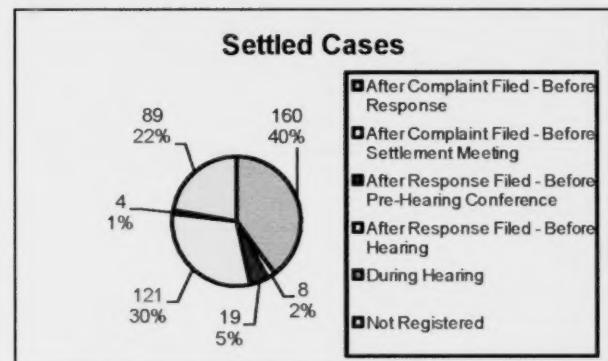
## SETTLEMENT MEETINGS

The Tribunal's settlement meeting services continue to be heavily used.

We encourage participation in settlement discussions and provide the option of a tribunal-assisted settlement meeting before the respondent files a response to the complaint, and at any later stage in the process. Many complaints settle as a result of these efforts and creative solutions are achieved which could not be ordered after a hearing.

The Tribunal conducted 276 early settlement meetings (before a response to the complaint is filed) and 104 settlement meetings (at any point after a response to the complaint is filed and prior to the commencement of a hearing). In addition, the Tribunal provided settlement assistance to the parties in four cases in the midst of hearing. The parties were able to resolve their disputes in over 82% of all cases in which the Tribunal provided assistance. In addition, some cases settled without the Tribunal's involvement.

Because settlement meetings are usually a confidential process, the Tribunal does not publish the results. In many cases, the settlement meeting resolves other aspects of the parties' relationship and this has transformative impacts without the adversarial process of a hearing. Some cases resolve on the basis of an acknowledgement that there has been a breach of the *Code* and an apology. In others, the mediated solution results in systemic change and awards greater than those that might be obtained after a hearing.



## TIME LIMIT APPLICATIONS

In section 22 of the *Code*, there is a six-month time limit for filing complaints.

The time limit is designed to permit respondents to go about their activities without worrying about the possibility of stale complaints being filed against them.

A complaint about events more than six months before the complaint was filed is timely if it alleges a "continuing contravention" where the most recent incident occurred within six months of the complaint being filed.

The Tribunal considered 94 applications under section 22 of the *Code*. This includes applications to dismiss a complaint made under section 27(1)(g), discussed below.

The Tribunal found that 39 complaints were untimely at least in part. 32 complaints were not accepted or were dismissed as untimely. The Tribunal accepted 22 late-filed complaints under section 22(3).

## CONTINUING CONTRAVENTION

A "continuing contravention" includes repeated instances of discrimination of the same character. For example, a complaint alleged that an employer did

## PRELIMINARY DECISIONS

not accommodate the complainant's disability and twice denied her employment-related opportunities. Only one event regarding employment opportunities occurred within 6 months of filing the complaint. The two events regarding employment opportunities were similar and occurred close together, and were a timely continuing contravention. An ongoing failure to accommodate is a continuing contravention, but the accommodation allegations were of a different nature from the allegations regarding the denial of employment opportunities and occurred more than four months earlier. The accommodation allegations were out of time, as they were not part of the continuing contravention regarding employment opportunities. (*Bates v. Vancouver Island Health Authority and Hospital Employees Union*, 2010 BCHRT 174)

### DISCRETION TO ACCEPT LATE-FILED COMPLAINTS

The Tribunal may accept a complaint or part of a complaint filed after the time limit if it determines that it is in the public interest to do so and no substantial prejudice would result to anyone because of the delay.

Whether it is in the public interest to accept a complaint filed outside the six-month time limit is decided in light of the purposes of the *Code* set out in section 3 and depends on the circumstances of the case. The length of the delay, the reasons for the delay, and the uniqueness or possible significance of the allegations of discrimination are factors.

For example, it was not in the public interest to accept a complaint where:

- the complaint was filed one month late without a reasonable explanation for the delay in filing, and because other recourse was available. (*Harris v. Victoria Police Department*, 2010 BCHRT 117)

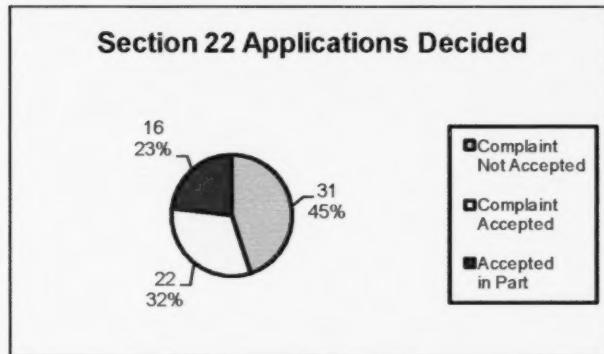
- the complaint was filed three and a half months late after an unsuccessful grievance process. Complaints should be filed on time while other options are pursued and there was no explanation for the delay after the grievance was denied. (*Castro-Llego v. SHARE and another*, 2010 BCHRT 120)
- the complaint was filed two and a half weeks late, and the allegations, even if proven, would not contravene the *Code*. (*Miller v. Northern Metalic and another*, 2010 BCHRT 130)
- the complaint was filed over one year late, and the complainant did not provide medical evidence that the delay was due to her psychological condition. (*Clabburn v. UBC and CUPE Local 2950*, 2010 BCHRT 173)
- the complaint was filed five months late, there was no explanation for the delay, and it is not in the public interest to reopen an accommodation agreement or to duplicate a grievance process capable of addressing allegations of a failure to accommodate. (*Bates v. Vancouver Island Health Authority and Hospital Employees Union*, 2010 BCHRT 174)

On the other hand, the Tribunal accepted late-filed complaints where:

- the complaint was filed three months late, but the complainant did not know her union was not pursuing a grievance until two and a half months after the time limit, she filed her complaint soon after, and the respondent took no position on the time limit application. The complainant's dismissal was a live issue between the union and employer until shortly before the complaint was filed so the delay did not result in substantial prejudice. (*Meek v. H. Y. Louie*, 2011 BCHRT 21)

# PRELIMINARY DECISIONS

- the complaint was filed one day late and the issues raised were infrequently addressed by the Tribunal. (*Hansen v. All Seven Star Homes and others*, 2010 BCHRT 296)



## APPLICATIONS TO DISMISS A COMPLAINT

Section 27(1) allows complaints to be dismissed that do not warrant the time or expense of a hearing on the merits. Generally, applications are decided based on written submissions early in the process.

Applications to dismiss accounted for 59% of preliminary decisions this year. Of the 161 decisions, 80 (49%) were dismissed and 16 (10%) were partially dismissed. 65 (40%) applications were denied.

The Tribunal may dismiss a complaint for the following reasons:

### 1. NO JURISDICTION: SECTION 27(1)(a)

The Tribunal may dismiss a complaint because of a lack of jurisdiction when it is against a federally regulated company, if the conduct was outside BC, or if the area or ground of discrimination does not apply to the facts alleged.

For example, the Tribunal concluded that the relationship between a law firm and one of its partners was one of “employment” and that it has jurisdiction over the complaint. (*McCormick v. Fasken Martineau Dumoulin (No. 2)*, 2010 BCHRT 347) Upheld on

judicial review, 2011 BCSC 713. An appeal has been filed.

### 2. NO CONTRAVENTION OF THE CODE: SECTION 27(1)(b)

The Tribunal may dismiss a complaint under section 27(1)(b) if the acts or omissions alleged in the complaint do not contravene the *Code*. The Tribunal assesses whether the complaint alleges facts that, if proven, could constitute a contravention of the *Code*. No consideration is given to any alternative explanation or alternate version of events put forward by the respondent.

For example, the Tribunal dismissed a complaint that the complainant was laid off due to a disability because it did not allege facts which, if proven, could establish the necessary nexus between the lay off and his disability. (*Heye v. Sandman Hotels*, 2010 BCHRT 225).

The Tribunal declined to dismiss a complaint where an allegation that a complainant supported a co-worker’s harassment complaint, that the respondent was aware of her support, and that she was terminated shortly after the respondent became aware that the co-worker had filed a complaint with the tribunal, could if proven constitute a breach of the *Code*. (*Martin v. Kamloops Cariboo Regional Immigrant Society*, 2010 BCHRT 343)

### 3. NO REASONABLE PROSPECT OF SUCCESS: SECTION 27(1)(c)

The Tribunal may dismiss a complaint under section 27(1)(c) where there is no reasonable prospect it would be found to be justified at a hearing.

The Tribunal considers the materials before it on a global basis, and applies its specialized expertise in human rights to determine whether there is no reasonable prospect that the complaint will succeed.

## PRELIMINARY DECISIONS

Factual disputes or credibility issues do not mean the Tribunal cannot dismiss a complaint under section 27(1)(c). However, significant differences in the versions of events put forward by the parties on crucial issues may require a hearing to fully explore and test that evidence. (*Marshall v. Teck Coal*, 2010 BCHRT 271)

### **4. PROCEEDING WITH THE COMPLAINT WOULD NOT BENEFIT THE PERSON, GROUP OR CLASS ALLEGED TO HAVE BEEN DISCRIMINATED AGAINST: SECTION 27(1)(d)(i)**

The Tribunal may dismiss a complaint if it determines that proceeding with the complaint would not benefit the person, group or class alleged to have been discriminated against.

The Tribunal dismissed a complaint because the person who filed the complaint was not an appropriate representative for the class. It said:

- The Tribunal must ensure it does not make the requirements for a complaint on behalf of a group or class so onerous that the purposes, efficiency and advantages gained from proceeding with a representative complaint are nullified.
- The *Code* does not require that the members authorize the filing of a representative complaint on their behalf, nor must the representative canvas all members with respect to their interest in proceeding.
- The nature and scope of the notice and communication obligations placed on a representative depend on the individual circumstances in any complaint.

It was not in the interests of the class for the complaint to proceed because the representative had not identified the individuals who may be included in the

class he represents, he had not effectively communicated with the class, and the Tribunal was not satisfied that the representative's interests were aligned with those of the class members. (*Jones obo residents of Norquay v. City of Vancouver*, 2010 BCHRT 207)

### **5. PROCEEDING WITH THE COMPLAINT WOULD NOT FURTHER THE PURPOSES OF THE CODE: SECTION 27(1)(d)(ii)**

Proceeding with a complaint would not further the purposes of the *Code* where a reasonable "with prejudice" settlement offer remains open, or where a respondent promptly took appropriate steps to remedy the alleged discrimination. The Tribunal dismissed complaints where:

- the complainant, in a grievance process, had signed a release including all claims arising under the *Human Rights Code*. (*Harck v. City of Port Coquitlam*, 2010 BCHRT 348)
- two other processes and a settlement between the parties did not explicitly deal with a discrimination complaint, but addressed the complainant's dignity and the conduct that was the subject matter of the complaint. (*Sipes v. West Vancouver Police Department* (No. 2), 2010 BCHRT 281)

### **6. COMPLAINT FILED FOR IMPROPER PURPOSES OR IN BAD FAITH: SECTION 27(1)(e)**

A respondent must meet a high standard to have a complaint dismissed under section 27(1)(e). It is not enough to present a different version of events or allege the complainant is not truthful. (*Morris v. Jordan Development and another* (No. 2), 2010 BCHRT 214)

# PRELIMINARY DECISIONS

## 7. COMPLAINT APPROPRIATELY RESOLVED IN ANOTHER PROCEEDING: SECTION 27(1)(f)

The Tribunal may dismiss a complaint where it determines that the substance of the complaint has been appropriately resolved in another proceeding, such as a grievance proceeding.

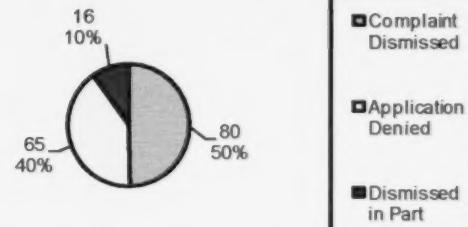
Under section 27(1)(f), the Tribunal does not determine if another decision was correct, but whether the decision-maker proceeded fairly, on the proper principles, with due consideration of the facts and human rights law relevant to the discrimination issue. The Tribunal found an arbitrator's decision appropriately decided the substance of a complaint where:

- the discrimination issue was squarely raised by the union at the arbitration;
- the same overall factual issues were raised in the arbitration and in the complaint;
- there was no suggestion that the hearing was unfair;
- there was no suggestion that the union's representation of the complainant was inadequate; and
- the arbitrator reviewed the applicable human right principles, and determined that no discrimination had been established. (*Brekelmans v. B.C. (Ministry of Housing and Social Development)*, 2010 BCHRT 292)

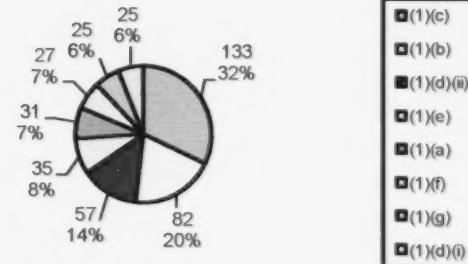
## 8. ALLEGED CONTRAVENTION OUTSIDE THE TIME LIMIT: SECTION 27(1)(g)

If the Tribunal does not identify a time limit issue in its screening process, a respondent can apply to dismiss a complaint on the basis that it is not timely. It determines if the complaint is timely, and if not, whether it should accept the late-filed complaint.

### Section 27 Applications Decided



### Sub-Sections of Section 27 Relied On



### OTHER DECISIONS

The Tribunal also makes oral and written decisions on other matters. Other decisions accounted for 33% of the preliminary decisions. Of the 89 decisions rendered, 34 (39%) were granted, 2 (2%) were granted in part, and 51 (56%) were denied.

### DEFERRAL

The Tribunal may defer consideration of a complaint under section 25 of the *Code* if another proceeding is capable of appropriately dealing with the substance of the complaint.

The Tribunal did not defer in a case where there was no information about whether the legal framework in the other proceeding was consistent with human rights principles, or indicating that the complainant had access to any remedial provisions if successful.

## PRELIMINARY DECISIONS

*(Chau v. Anderson, 2011 BCHRT 3)*

### ADDING RESPONDENTS

The Tribunal may add a respondent to a complaint, on the application of a party, but:

- A complainant may not apply to add a respondent to circumvent the time limits set out in the *Code*. If a complaint against the proposed respondent would be late-filed, the Tribunal will consider if it is in the public interest to add the respondent, and whether there would be substantial prejudice to any person because of the delay.
- The Tribunal considers whether there are allegations that could breach the *Code*, whether adding the proposed respondent would assist in resolving the case, natural justice concerns, and other relevant circumstances. (*Mucciolo v. Hayworth Communities*, 2010 BCHRT 160)

### AMENDING A COMPLAINT

A complainant must apply to amend a complaint if the hearing is less than two months away, the amendment adds an allegation that is out of time, or there is an outstanding application to dismiss the complaint.

The Tribunal did not allow an amendment filed following a dismissal application, as expanding the scope of the complaint would unfairly deprive the respondents of the opportunity to frame their dismissal application in accordance with the complaint as accepted. (*Preston v. TRIUMF and another (No. 2)*, 2010 BCHRT 211)

### LIMITING PUBLICATION OR ACCESS

The Tribunal's process is public, and information may become public as specified in rule 6 of the Tribunal's *Rules of Practice and Procedure*. This includes in

a published decision, on the Tribunal's hearing list, as well as public access to parts of a complaint file before a hearing. A party may apply to limit publication, including delaying the posting of a complaint on the hearing list if the parties are in settlement discussions, or anonymizing a decision. A party may also apply to have a hearing conducted in private, but public access is the general rule.

### TIME EXTENSIONS

The Tribunal sets time limits in the complaint process, but a party may request or apply for additional time.

### DISCLOSURE

The parties must provide each other with any documents that may relate to issues in dispute and the Tribunal may order a party to disclose particular documents after first establishing that they are arguably or potentially relevant. It may also order conditions to protect privacy. (*Gichuru v. The Law Society of British Columbia (No. 5)*, 2010 BCHRT 137)

### INTERVENORS

The Tribunal may permit a person or group to intervene in a complaint, especially if they will bring a different and useful perspective to the issues and their participation will not unduly affect the parties.

### ADJOURNMENTS

A party who wants to adjourn a hearing must show that the request is reasonable and would not unduly prejudice the other participants.

### RECONSIDERATION

The Tribunal has an equitable power, not specified in the *Code*, to reconsider a matter. This power is

# FINAL DECISIONS

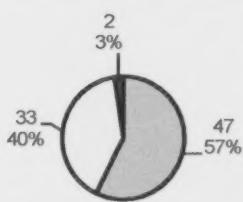
exercised when required by the interests of fairness and justice. (*S v. B.C. (Min. of Children and Family Development) and others (No. 2)*, 2010 BCHRT 144)

## COSTS

The Tribunal may order costs if a party engaged in improper conduct during the course of a complaint or contravened a rule, decision, order or direction of the Tribunal. Costs may be ordered during the proceeding or after a final decision is made.

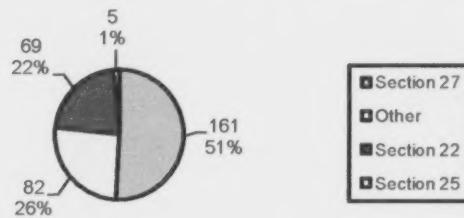
The Tribunal ordered the respondent to pay one third of the complainant's legal costs, for improper conduct that had a significant impact on the integrity of the Tribunal's process and a significant prejudicial impact on the complainant. The respondent tried to obtain disclosure of medical documents from the complainant's doctor without making a request to the complainant, while she was unrepresented, and before disclosure was due. The respondent also applied for disclosure of her former spouse's contact information, when he clearly had no relevant evidence to give, when it was most likely to cause disruption to the hearing, and one motivation was to cause maximum anxiety and discomfort to the complainant. (*Ford v. Peak Products Manufacturing and another (No. 3)*, 2010 BCHRT 155)

## Other Applications Decided



- Application Denied
- Application Granted
- Application Granted in Part

## Preliminary Applications Decided



## FINAL DECISIONS

This year, the Tribunal made 38 final decisions after a hearing on the merits.

47% of the complaints (18 out of 38) were found justified in whole or part after a hearing.

## REPRESENTATION BEFORE THE TRIBUNAL

This year there was one case where the complaint was dismissed because the complainant did not appear. There were two cases where no respondent appeared, and in both cases the complaint was found to be justified.

Consistent with prior years, more complainants were self-represented in hearings on the merits than respondents. Complainants had a lawyer in 10 cases, while respondents had a lawyer in 19 cases. There were 9 cases where all parties had a lawyer and 18 cases where all parties were self-represented.

In past years, there has been a correlation between legal representation for complainants and success. In 2009/2010, complainants with counsel succeeded in 50% of cases. This year, represented complainants won 50% of their cases, while complainants without legal representation won 48% of their cases. Respondents with lawyers succeeded in 58% of the cases, and were unsuccessful in 47% of the

## FINAL DECISIONS

cases when unrepresented. This year, there were notably more cases where both parties were self-represented (47%) as compared to last year (19%).

### CASE HIGHLIGHTS

The following are some key highlights of this year's final decisions:

- the majority of final decisions (31 out of 38 cases heard) involved the area of employment (s. 13); 47% were found to be justified;
- 5 decisions involved services (s. 8); 40% were found to be justified;
- 3 decisions involved retaliation (s. 43);
- 1 decision involved tenancy (s. 10);
- no decision involved the areas of publication (s. 7); membership in a union, employer's organization or occupational association (s. 14); purchase of property (s. 9); employment advertisements (s. 11); or lower rate of pay based on sex (s. 12);

With respect to grounds of discrimination:

- 23 of the 38 final decisions dealt with physical and/or mental disability; 45% were found to be justified;
- sex discrimination due to pregnancy or sexual harassment was the subject of 9 final decisions; 44% of these complaints were found to be justified;
- 3 final decisions each on the grounds of religion, age, and race/colour/ancestry or place of origin;
- 1 decision each on family status, marital status, sexual orientation and political belief.

- no decision respecting the grounds of source of income or criminal conviction.

### FINAL DECISIONS OF INTEREST

#### *SINGLE SLUR, TAKEN IN CONTEXT, NOT DISCRIMINATORY*

A police officer did not discriminate in handling a custody-related dispute at a daycare, where the complainant father was arrested for refusing to leave the premises. When the father complained of unfair treatment and said his wife should be arrested, the officer said something like "Go back to China if you think they deal with these situations better", or "If you don't like it, go back to China." The Tribunal found that this language, viewed in context, was an inappropriate comment arising out of a very strained and tense situation, but not discrimination. (*ML v. LeQuesne*, 2010 BCHRT 247)

#### *EMPLOYER FIRES WORKER RATHER THAN DEALING WITH SEXUAL HARASSER'S CONDUCT*

A younger worker was sexually harassed by her much older male supervisor, who used his workplace access to her cell phone number to contact her at home and pursue her. She said that she was not interested and complained to her employer about his conduct. After a verbal reprimand about his behaviour, he lured her to his home on a work-related pretext, made further inappropriate comments and threatened to interfere with her employment. When she again complained, the employer terminated her employment, as it was easier to remove a short-term employee than deal with the supervisor's conduct. As against the supervisor, the company and its owner, the Tribunal awarded lost wages and \$5,000 for injury to dignity. It also made a declaratory order, and ordered that a copy of the decision to be given to every current employee. (*Soroka v. Dave's Custom Metal Works and*

## FINAL DECISIONS

*others*, 2010 BCHRT 239)

### DISMISSAL OF MENTALLY DISABLED WORKER ON LEAVE WITH AN UNKNOWN RETURN DATE

An employee on short-term medical leave due to depression and anxiety was expected to return to work but the return date was unknown. The company discriminated when it terminated her employment because she was not available to work within a foreseeable time, and she was not given the opportunity to provide further information. She lost her job shortly before qualifying for long-term disability benefits. The company did not provide evidence of undue hardship in continuing to employ her until she could apply for these benefits. It did not incur any cost as a result of the worker's absence other than operational inconvenience. The complaint against the company's owner, who was not directly involved in the decision to terminate, was dismissed. A declaratory order was made and the complainant was awarded lost wages, hearing-related expenses and \$25,000 for injury to dignity based on evidence that she was suffering from serious mental health issues that were exacerbated by the termination. She was also awarded costs in the amount of one third of her legal costs, because the company's conduct went beyond the bounds of a vigorous defence and into the realm of intimidation. (*Ford v. Peak Products Manufacturing*, 2010 BCHRT 155)

### DISCUSSION ABOUT AN EMPLOYEE'S FUTURE PLANS NOT AGE OR DISABILITY DISCRIMINATION

An employer privately discussed his age and future plans with an unhappy employee, to try to find out what would improve his situation. This was not age or disability discrimination, as there was no adverse work-related impact on him. Further, when the employee was unable to return to work because of a mental disability, his failure to provide the employer with requested information about the nature of his

disability, and how to structure the accommodation, frustrated the accommodation process. (*Fletcher v. Meadow Gardens (No. 2)*, 2010 BCHRT 148)

### REFUSAL TO ALLOW DISABLED EMPLOYEE TO COMPLETE PHYSICAL TESTING FOR APPRENTICESHIP

A physically-disabled employee was not allowed to take the physical testing component of a job, which required lifting 40 pound refrigerant bottles onto roofs. The employer's attempts at accommodation, viewed globally, were sufficient to show undue hardship. While the employer did not consult the employee because of a difficult work relationship, the duty to accommodate process was satisfied because the employer already had information about the employee's limitations and asked if his condition had changed. The employer explored whether an assistive device could be created to lift the refrigerant bottles, but concluded that only a fixed device could be used, which would have to be installed on every building serviced. Although it failed to consider using smaller bottles, the outcome would not have been any different. There was also no age discrimination in management's comment that apprenticeship positions were historically given to younger workers but that was changing, or that a younger candidate was successful. This was not sufficient to establish a link between the complainant's age and the refusal to allow the employee to complete the physical testing. (*Pausch v. School District No. 34 and others*, 2010 BCHRT 134)

### SMALL BUSINESS CHANGES DISABLED WORKER'S JOB

An office worker in a family-run bus company was injured in a workplace accident. While she was away, the new owner reduced the administrative support for the company. When told she would have to do some bus driving because the office work was

## FINAL DECISIONS

reduced, she quit. The Tribunal held that the reorganization was not linked to the complainant's mental and physical disabilities. Further, her position was better than other part-time employees as she still had some office duties to do. She had not established a *prima facie* case of discrimination nor had she cooperated in the process by quitting when her old job was not available. The Tribunal noted that accommodation options are more limited in a small family business than in larger multi-faceted enterprises. (*Williams v. Sechelt School Bus Service and another (No. 2)*, 2010 BCHRT 251)

### BODY WEIGHT A PERCEIVED DISABILITY IN NOT OFFERING WORK

A flagger was not offered work because his employer perceived him to be unable to stand for long periods of time because of his weight. The employer told him that his weight was the reason for not being called in to work, to avoid telling him that a contractor was unhappy with his previous conduct and did not want him back at its worksite. He received an immediate apology afterwards and was given more information about why he was not offered work. The Tribunal awarded \$2,000 for injury to dignity, feelings and self-respect. (*Johnson v. D & B Traffic Control and another*, 2010 BCHRT 287)

### NO DISCRIMINATION WHERE WORKER RETURNING FROM MATERNITY LEAVE REJECTED PART-TIME WORK IN ECONOMIC DOWNTURN

A hotel was sold while a server was on pregnancy leave. The new owner did not know that the server was an employee, but when this was verified, some hours were quickly offered, with more hours to equal the reduced hours being given to other employees. The server did not show up for work because it was not full time. The Tribunal found that the server's hours and conditions of employment were not adversely changed due to her leave. The owner was en-

titled to make changes to his business which resulted in all servers working part-time. The server refused to return to work and was deemed to have abandoned her job. The Tribunal also dismissed the server's retaliation complaint. (*Facchin v. Crossroads Restaurant and another*, 2010 BCHRT 288)

### RACISM COMPLAINT DISMISSED WITH COSTS AGAINST THE COMPLAINANT

The complainant alleged that security personnel in a retail store targeted him as a shoplifter, and falsely arrested and subjected him to a racial comment because they perceived him to be an Indian. He sought costs for the store's alleged destruction and concealment of a security video recording. The Tribunal concluded that the alleged comment and other parts of complainant's evidence were fabricated, and found his complaint to be unjustified. The store produced the video and provided an unshaken explanation why the entire footage was not available. The Tribunal awarded costs of \$3,000 against the complainant. He was found to be untruthful about the central allegation in his complaint and had manufactured evidence by surreptitiously recording a conversation with store personnel tailored to obtain incriminating statements. A petition for judicial review has been filed. (*Barta v. Sears Canada and another (No. 2)*, 2010 BCHRT 289)

### PHYSICALLY-DISABLED STUDENT DEMEANED AND HUMILIATED

The complainant took a vocational school nail technician course. She used a wheelchair, and required a catheter. Several times she was told to leave class in front of her classmates, often in tears, because of "odour" and once she was relegated to the hall for four hours. She was moved to an evening class and then offered one on one instruction, instead of attending the class. She received only 280 of 350 instructional hours, and failed her exam by 1%. The Tribunal

# FINAL DECISIONS

found that she was discriminated against in services because of her physical disability. She would have passed the course if given the full instructional hours and had a 70% likelihood of being employed had she graduated. The Tribunal awarded \$10,000 for injury to dignity, loss of future income and full compensation for student loans taken out to pay for tuition. (*Laberge v. Martier School of Hair Design & Esthetics and another (No. 2)*, 2010 BCHRT 302)

## EMPLOYER FIRES MANAGER WITHOUT INQUIRING ABOUT ROLE OF DISABILITY

A manager was fired for not attending a board meeting. The Tribunal did not accept that there were gross performance deficiencies that justified the termination. The employer reasonably ought to have been aware that there might be a relationship between the manager's mental condition and his absence, and had a duty to inquire before terminating him. His disability, therefore, was a factor in the loss of his job. He was awarded \$10,000 for injury to dignity, lost wages, compensation for the wage difference in his new employment and other expenses. (*Bowden v. Yellow Cab*, 2011 BCHRT 14)

## IF SEXUAL PRACTICE "LIFESTYLE" PROTECTED, NO DISCRIMINATION PROVEN

The complainant, a Pagan and a BDSM (bondage/domination/sadism/masochism) "lifestyler", alleged he was discriminated against when the police denied him a chauffeur's permit. The permit was eventually granted when he appealed. Assuming, without deciding, that the complainant was a member of a protected group on the basis of his religion and/or sexual orientation, he did not establish that the permit was denied because of the real or perceived characteristics of a BDSM "lifestyler" being attributed to him, nor that there was a connection between his religion and BDSM. The police refused the permit because they believed that he presented an unacceptable risk

to vulnerable members of the public. (*Hayes v. Vancouver Police Board*, 2010 BCHRT 324)

## SEXUAL HARASSMENT AFTER WORKPLACE ROMANCE

The complainant had a consensual personal relationship with her boss. After she ended the relationship, he continued to text sexual messages despite repeated objections, which detrimentally affected her work environment. The Tribunal did not accept that she was the "workplace flirt", nor that opening and sometimes responding to the messages, and not deleting them, made her a willing participant. She eventually took stress leave and quit. Compensation was awarded for lost wages, reimbursement of expenses, and \$12,500 for injury to dignity. The creation and implementation of a workplace policy on sexual harassment was strongly encouraged. (*McIntosh v. Metro Aluminum Products*, 2011 BCHRT 34)

## RETALIATORY DENIAL OF MEMBERSHIP RENEWAL IN A NON-PROFIT ORGANIZATION

The complainant worked as a volunteer and then a member of a non-profit society. The Tribunal dismissed a complaint he made against the society, which the society viewed as a drain on its resources. The society then changed its policy to require applications for membership to be approved by its board, rather than approved administratively as before, purporting to bring its practice into compliance with its bylaws. When the complainant sought to renew membership, he had to apply formally as if he were a new member, and was unsuccessful. The Tribunal held that the denial of membership application was "retaliatory", as the complainant found working for a good cause to be meaningful and enjoyable, and membership also entitled him to a store discount. There was no credible evidence supporting the board's claim that the complainant's membership was denied because staff were afraid of him, or that he did not contribute any

## FINAL DECISIONS

particular skill as a volunteer. The Tribunal ordered that the complainant be reinstated as a member and awarded \$3,000 for injury to dignity. (*Stewart v. Habitat for Humanity Victoria*, 2010 BCHRT 322)

### *PRETEXTUAL FIRING OF DISABLED EMPLOYEE IN A SMALL COMMUNITY AN AGGRAVATING FACTOR*

A Dairy Queen employee was called a derogatory name by her manager that referred to her having one arm. Her employer made her job more difficult by creating more work and requiring work to be done that was known to be more challenging for a person with her disability to do. The Tribunal found that the employer's explanation that she was terminated for cause was a pretext and the reasons given for the termination were serious and hurtful. They included that she stole, gave food away and talked for extended periods of time to people who were not customers. The complainant was devastated and she suffered financial hardship, exacerbated because she lived in a small community. The Tribunal ordered compensation for lost wages and \$15,000 for injury to dignity. (*Vernon v. Howatt Enterprises*, 2010 BCHRT 313)

### *FAILURE TO PROVIDE FURTHER WORK DUE TO PERCEIVED DISABILITY AND INTIMIDATING CONDUCT BEFORE HEARING RETALIATORY*

When a young warehouse worker who injured his back on the job returned to work, without restrictions and fully recovered after a short absence, his supervisor told him that he was being dismissed because it was likely that he would reinjure his back. The Tribunal found that he was discriminated against based on a perceived disability; a weak back that might be susceptible to further injury. It also found that the employer retaliated against him for filing a complaint when he went to his former place of business to provide his list of witnesses for the hearing. He was sworn at, threatened with the police, almost physically charged and escorted off the property pub-

licly while being videotaped. This behaviour was designed, at least in part, to scare him on the eve of the hearing. The Tribunal ordered partial lost wages, reimbursement for a training course required to find other employment and \$4,000 for injury to dignity. A further \$4,000 was awarded for injury to dignity resulting from the retaliatory conduct. (*Cartwright v. Rona and another*, 2011 BCHRT 65)

### *WIFE BANNED FROM ACCESSING SERVICES DUE TO SERVICE-PROVIDER'S DISPUTE WITH HER HUSBAND*

The complainant and her husband purchased property on a remote island to retire and build a small resort. Virtually every service, including essentials like food, fuel and emergency access off the island was owned by the corporate respondent and its owner, and most residents worked for the company. As a result of a billing dispute with the complainant's husband, the company banned them from all island services. The Tribunal found that the complainant wife was discriminated against based on marital status, even though she had not been on the island during the three months that the ban was in effect. The Tribunal awarded compensation for expenses incurred to attend the hearing and prove the complaint and \$2,000 for injury to dignity for the humiliation of not being able to access her island home. (*Bray v. Shearwater Marine and another*, 2011 BCHRT 64)

# JUDICIAL REVIEWS AND APPEALS

## JUDICIAL REVIEWS AND APPEALS

The *Code* does not provide for an appeal of Tribunal decisions but a party may petition for a judicial review in B.C. Supreme Court within 60 days, pursuant to the *Judicial Review Procedure Act* and the *Administrative Tribunals Act* ("ATA").

Judicial review is a limited type of review. Generally, the Court considers the information that the Tribunal had before it and decides if the Tribunal made a decision within its power or in a way that was wrong. The Court applies the standards of review in section 59 of the *ATA*, to decide if the decision should be set aside or stand even if the Court does not agree with it. If the decision is set aside, it is usually sent back to the Tribunal for reconsideration.

A BC Supreme Court judicial review decision may be appealed to the BC Court of Appeal. A further appeal to the Supreme Court of Canada may occur with leave of that court.

## JUDICIAL REVIEWS IN BC SUPREME COURT

This year, 14 petitions for judicial review were filed in the Supreme Court, as compared to 24 in the prior year.

The Court issued 10 judgements, granting two petitions. Three of these judgements reviewed final decisions:

- A finding of wage discrimination against a female drywall finisher was upheld. (*Kraska v. Pennoch*, 2011 BCSC 109)
- An award of costs was set aside. (*Downtown Vancouver Business Improvement Association v. Pivot Legal Society*, 2010 BCSC 807) (Notice of Appeal filed)

- A remedial award for employment discrimination on the grounds of mental and physical disability (Parkinson's Disease) was upheld but set aside and remitted for reconsideration on appeal. (*Morgan Hung v. British Columbia Human Rights Tribunal and Provincial Health Services Authority* (17 June 2010) New West Reg. S124628 (B.C.S.C.); 2011 BCCA 122)

Seven of the judgements reviewed preliminary decisions of the Tribunal:

- A judicial review of a decision respecting the admissibility of documents was found to be moot. (*Gichuru v. The Law Society of British Columbia*, 2010 BCSC 522)
- A complaint dismissed pursuant to section 27(1) (d)(ii) on the basis that an employer appropriately responded to an offensive cartoon posted in the workplace, and subsequent reconsideration by the same member, was upheld. (*Karbalaieali v. British Columbia (Human Rights Tribunal)*, 2010 BCSC 1130; *Karbalaieali v. British Columbia (Human Rights Tribunal)*) (15 October 2010) Vancouver S096365 (B.C.S.C.)
- Dismissal of an employment complaint under section 27(1)(c) was upheld. (*Hamedanian v. The British Columbia Human Rights Tribunal and others* (09 February 2011) Vancouver S098351 (B.C.S.C.))
- A dismissal under section 27(1)(c) of a race-based complaint about denial of access to a cabaret was set aside and remitted back to the Tribunal. (*White v. The Roxy Cabaret Ltd.*, 2011 BCSC 374)
- Judicial review of a decision to defer answering certain jurisdictional questions until a hearing was held to be premature. (*HMTQ v. Swetlishoff*,

## JUDICIAL REVIEWS AND APPEALS

2010 BCSC 1252)

- A dismissal under section 27(1)(c) of a complaint of discrimination in employment on the basis of sex and marital status, and a refusal to reconsider it, was upheld. (*Routkovskaia v. British Columbia (Human Rights Tribunal)*, 2011 BCSC 144) (Notice of Appeal filed)
- A refusal to accept a late-filed complaint was upheld. (*Lorenz v. The BC Human Rights Tribunal and others* (23 February, 2011) Vancouver No. S108205 (B.C.S.C.))

### COURT OF APPEAL

This year, there were four Notices of Appeal filed, as compared to six in the prior year.

In addition, leave was granted to appeal a ruling made during a judicial review that private transcripts made by one of the parties are part of the record of proceedings. (*SELI Canada Inc. v. Construction and Specialized Workers' Union, Local 1611*, 2010 BCCA 276)

The Court of Appeal issued seven judgments on appeals of judicial review decisions.

The Court upheld one final decision and set aside three others:

- The Court affirmed a decision by a chambers judge that the Tribunal erred in finding that a student with dyslexia had been discriminated against individually and systemically by a school district and the Province when efforts to accommodate his disability were made “too little, too late”. The Court disagreed with the Tribunal that the service at issue was general education. Rather, it was special education services and there was no *prima facie* discrimination as the complainant had received those services. (*British Columbia*

*(Ministry of Education) v. Moore*, 2010 BCCA 478) Leave to appeal to the Supreme Court of Canada has been granted.

- The Court upheld a Tribunal decision that an attendance management program systemically discriminated against workers with chronic or recurring disabilities in the way that it was applied, and that the employer failed to show that it was impossible to accommodate these workers without undue hardship. (*Coast Mountain Bus Company Ltd. v. National Automobile, Aerospace, Transportation and General Workers of Canada (CAW - Canada), Local 111*, 2010 BCCA 447)
- The Court decided that the Tribunal should reconsider part of its remedial award because its wage loss award was based on a factual error, and insufficient reasons were given for the decision respecting medical expenses and the requested removal of an adverse note on a personnel file. The award for injury to dignity was upheld. (*Morgan-Hung v. British Columbia (Human Rights Tribunal)*, 2011 BCCA 122)
- The Court affirmed a chambers judge's decision overturning a Tribunal finding of discrimination in services provided by a housing co-operative that allowed only one member per residential unit. A widow of a member did not suffer any adverse treatment because of her marital or family status, though she lost her suite because her application for membership was denied. She was treated like other non-members living in the co-op, who were subject to the “one member rule”. (*Lavender Co-operative Housing Association v. Ford*, 2011 BCCA 114)

In addition, in the *Coast Mountain Bus Company* and *Lavender Co-operative* decisions, the Court affirmed that the correctness standard applies to judicial review of questions of mixed fact and law, such as findings of discrimination, pursuant to section 59(1)

## JUDICIAL REVIEWS AND APPEALS

of the *ATA*.

The Court also upheld two Tribunal dismissal decisions under section 27(1)(c): *Gichuru v. British Columbia (Workers Compensation Appeal Tribunal)*, 2010 BCCA 191 (employment discrimination), and *Gichuru v. Law Society of BC*, 2010 BCCA 543 (retaliation). It also found that was not premature for a chambers judge to review, and overturn, a section 27(1)(c) decision: *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49.

### SUPREME COURT OF CANADA

There were four applications for leave to appeal served on the Tribunal this year.

Leave was denied in *Armstrong v. British Columbia (Ministry of Health)*, [2010] S.C.C.A. No. 128 (QL) and *Gichuru v. British Columbia (Workers' Compensation Appeal Tribunal)*, [2010] S.C.C.A. No. 217 (QL).

Leave was granted in *British Columbia (Workers' Compensation Board) v. British Columbia (Human Rights Tribunal)*, [2010] S.C.C.A. No. 180 (QL). The appeal was heard March 16, 2011.

Leave was granted in *British Columbia (Ministry of Education) v. Moore*, 2010 BCCA 478 (QL).

## SPECIAL PROGRAMS AND POLICY

### SPECIAL PROGRAMS AND POLICY

Section 42(3) of the *Code* recognizes that treating everyone equally does not always promote true equality and the elimination of discrimination. It allows approval of special programs which treat disadvantaged individuals or groups differently to recognize their diverse characteristics and unique needs and improve their conditions.

Approvals are generally for six months to five years but may be renewed. Employment equity programs are usually approved for several years. Periodic reporting may be required.

Tribunal approval is not required, but when a special program is approved by the Chair, its activities are deemed not to be discrimination.

The Tribunal's Special Programs Policy and a list of special programs approved are posted on the Tribunal's website.

# TRIBUNAL MEMBERS

## BERND WALTER, ACTING CHAIR

Mr. Walter was appointed as acting Chair of the Tribunal on August 1, 2010. He continues to Chair the British Columbia Review Board during his tenure with the Tribunal.

Mr. Walter has chaired a number of BC Tribunals. He has also served as an ADM in the BC Public Service, as well as in Alberta and Ontario. He served as Alberta's First Children's Advocate.

His background includes program, policy and law reform, in particular in child protection, adoption, Aboriginal child and family services, child, youth and adult mental health and children's rights. He has also participated in First Nations Residential Schools reconciliation and healing work.

## HEATHER MACNAUGHTON, CHAIR AND MEMBER

Ms. MacNaughton was appointed as Chair of the Tribunal on August 1, 2000, and was reappointed for a second five-year term from July 31, 2005 to July 31, 2010. She was authorized, pursuant to section 7 of the *Administrative Tribunals Act*, to continue to exercise powers as a member over continuing proceedings until January 2011.

She holds both a Bachelor of Laws (1982) and Master of Laws (1998) from Osgoode Hall Law School and a Bachelor of Arts (with distinction) from Brock University (1979). Her Master's work focused on the Litigation Process and Alternative Dispute Resolution.

Prior to her appointment to the Tribunal, Ms. MacNaughton chaired both the Ontario Human Rights Board of Inquiry and the Ontario Pay Equity Hearings Tribunal.

Ms. MacNaughton left private practice in 1995 to become a Vice Chair of the Ontario Human Rights

Board of Inquiry, the Pay Equity Hearings Tribunal, and the Employment Equity Tribunal. Prior to that, she had been a partner with a national law firm practising in the areas of Labour, Employment, Human Rights, Administrative Law and Civil Litigation.

## J.A. (TONIE) BEHARRELL, MEMBER

Ms. Beharrell was appointed as a full-time Member of the Tribunal on December 2, 2002 for a five-year term. She was most recently reappointed for a five-year term expiring in December 2012.

She holds a law degree from the University of British Columbia (1997) and a Bachelor of Arts from Simon Fraser University (1994).

Prior to joining the Tribunal, Ms. Beharrell was an Associate at a national law firm practising in the areas of Labour, Employment, Human Rights, and Administrative Law.

## MURRAY GEIGER-ADAMS, MEMBER

Mr. Geiger-Adams was appointed a full-time Member of the Tribunal effective March 9, 2009 for a six-month term under a Chair's appointment. He was most recently reappointed for a five-year term expiring in January 2015.

He holds a law degree from the University of Toronto (1985), and a Bachelor of Arts (Honours) degree in political science from the University of British Columbia (1975).

Prior to joining the Tribunal, and from 1997-2008, Mr. Geiger-Adams was legal counsel for a professional association responsible for collective agreement administration.

Before that, and from 1985-1997, he was a student, associate and then partner in a Vancouver law firm, representing clients in matters including labour, human rights, aboriginal rights and employment.

## TRIBUNAL MEMBERS

### BARBARA HUMPHREYS, MEMBER

Ms. Humphreys was appointed as a full-time Member of the Tribunal in 1997. She was most recently reappointed for a five-year term expiring in January 2015. Ms. Humphreys has announced she will retire on July 1, 2011.

She holds a law degree from the University of Victoria (1984) and a Bachelor of Arts from Sir George Williams University (1969).

Ms. Humphreys joined the B.C. Council of Human Rights in 1990. She was actively involved in the transition from the former B.C. Council of Human Rights to the Human Rights Tribunal.

Prior to joining the B.C. Council of Human Rights, she was an Ombudsman Officer for the Office of the Ombudsman.

### DIANA JURICEVIC, MEMBER

Ms. Juricevic was appointed as a full-time Member of the Tribunal on March 3, 2011 for a temporary six-month term, pursuant to section 6 of the *Administrative Tribunals Act*. She holds a Juris Doctor and Master of Economics degree from the University of Toronto (2004). She also holds an Honours Bachelor of Arts degree from the University of Toronto (2001).

Prior to joining the Tribunal, Ms. Juricevic practised international criminal law before tribunals in The Hague and Cambodia. She was also the Acting Director of the International Human Rights program at the University of Toronto Faculty of Law where she taught courses on international criminal law and human rights advocacy.

At the outset of her career, Ms. Juricevic was an associate at a national law firm practising in the areas of civil litigation, administrative law, and human rights.

### ENID MARION, MEMBER

Ms. Marion was appointed as a full-time Member of the Tribunal, effective July 27, 2008 for a five-year term. She holds a law degree from the University of Victoria (1988).

Prior to joining the Tribunal, Ms. Marion practised labour, employment and human rights law as an Associate with a Vancouver law firm and as an Associate and then Partner with another Vancouver law firm.

### KURT NEUENFELDT, MEMBER

Mr. Neuenfeldt was appointed as a full-time Member of the Tribunal on January 6, 2003 for a five-year term. He was most recently reappointed for a five-year term expiring in January 2013.

He holds a law degree from the University of British Columbia (1978) and a Bachelor of Arts degree from the University of Wisconsin (1972).

For several years, Mr. Neuenfeldt worked with the Legal Services Society of BC. While there, he held a range of positions including Staff Lawyer, General Counsel and Director of Client Services. He then practised privately in Vancouver.

Prior to joining the Tribunal, Mr. Neuenfeldt had been a member of the Immigration and Refugee Board of Canada for over nine years.

### JUDITH PARRACK, MEMBER

Ms. Parrack was appointed as a full-time Member of the Tribunal on August 1, 2005 for a five-year term and she is authorized, pursuant to section 7 of the *Administrative Tribunals Act*, to continue to exercise powers as a member over continuing proceedings until completion. Ms. Parrack holds a law degree from Osgoode Hall Law School (1987).

## TRIBUNAL MEMBERS

Ms. Parrack was an Associate with a national law firm from 1989 to 1994 and a staff lawyer at the B.C. Public Interest Advocacy Centre from 1995 to 1999. She was a full-time Member of the B.C. Human Rights Tribunal from 1999 to 2002.

Prior to re-joining the Tribunal in 2004, Ms. Parrack was in private practice in the areas of Labour, Human Rights and Administrative Law.

### **NORMAN TRERISE, MEMBER**

Mr. Trerise was appointed as a full-time Member of the Tribunal on December 2, 2010 for a five-year term.

He holds a law degree from the University of British Columbia (1973) and a Bachelor of Arts degree from the University of Oregon (1969).

Prior to his appointment, Mr. Trerise practised labour, employment, human rights and administrative law as a partner with a national law firm.

### **MARLENE TYSHYNSKI, MEMBER**

Ms. Tyshynski became a full-time Member of the Tribunal on December 1, 2005 for a temporary six-month term.

Upon expiry of her term, Ms. Tyshynski returned to her position as legal counsel to the Tribunal. In October 2007, following amendments to the *Administrative Tribunals Act*, the Chair appointed her to a second six-month term. She was most recently reappointed to a five-year term expiring in April 2013.

She holds a law degree from the University of Victoria (1988), a Master of Social Work degree from Wilfred Laurier University (1978) and an Honours Bachelor of Applied Science degree from the University of Guelph (1976).

At the outset of her career, Ms. Tyshynski was an associate with two law firms in Victoria. She was in private practice for several years specializing in, among other areas, Administrative Law, then she worked as a staff lawyer for the Legal Services Society.

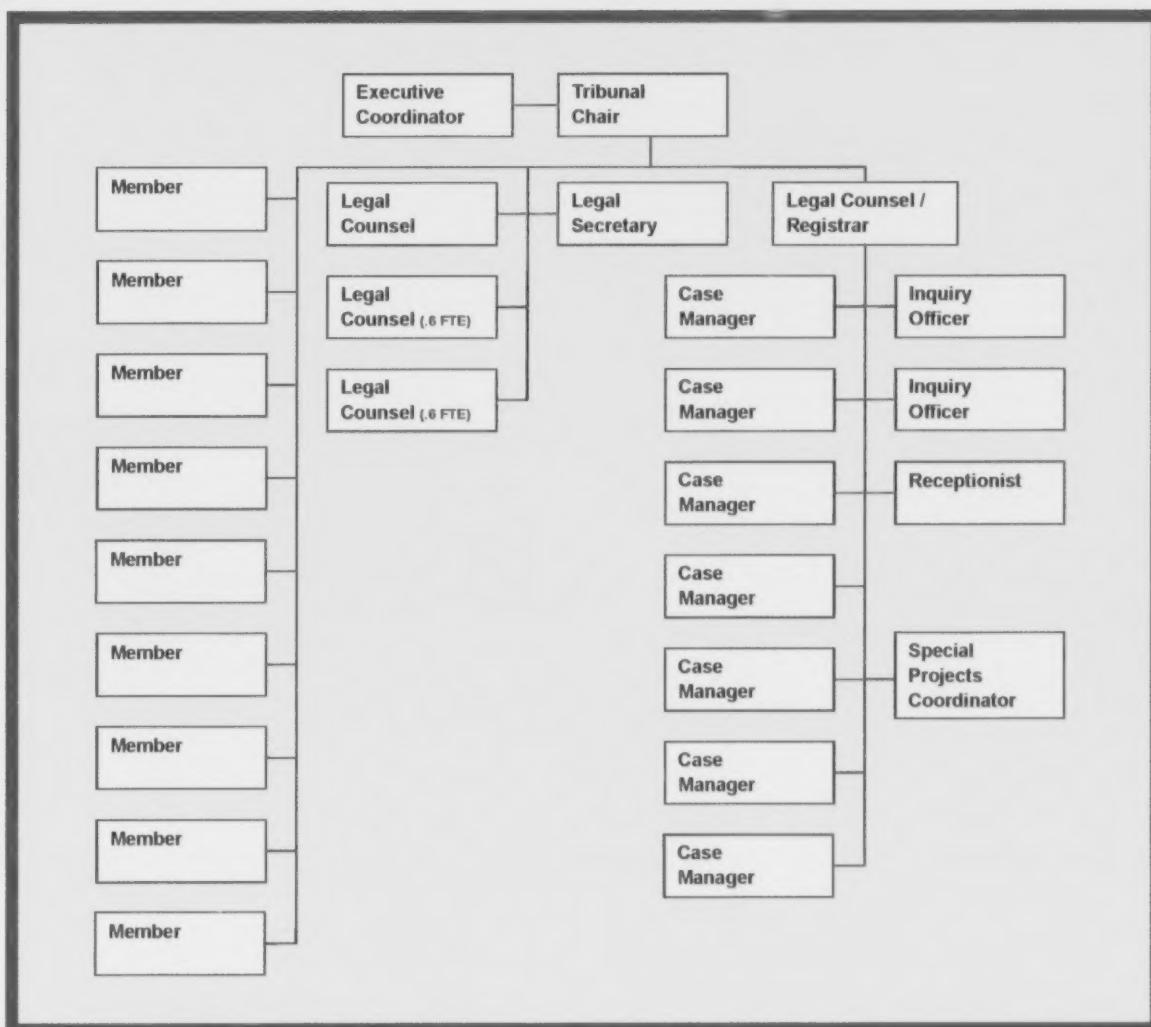
Prior to her appointment as Member, Ms. Tyshynski served as legal counsel to the Tribunal for three years.

## COST OF OPERATION

### BC Human Rights Tribunal Operating Cost Fiscal Year 2010-2011

Category	Expenditure	Delegated Budget	Variance
Salaries (Chair, Members, Registry and Administration)	\$ 2,092,551	\$ 2,177,000	\$ 84,449
Employee Benefits	\$ 511,518	\$ 533,000	\$ 21,482
Expired-Term Members – Fees for Completing Outstanding Decisions	\$ 54,994	\$ 20,000	\$ (34,994)
Travel	\$ 70,439	\$ 108,000	\$ 37,561
Centralized Management Support Services	\$ 0	\$ 0	\$ 0
Professional Services	\$ 151,561	\$ 80,000	\$ (71,561)
Information Services, Data and Communication Services	\$ 2,700	\$ 17,000	\$ 14,300
Office and Business Expenses	\$ 77,827	\$ 59,000	\$ (18,827)
Statutory Advertising and Publications	\$ 3,600	\$ 5,000	\$ 1,400
Amortization Expenses	\$ 0	\$ 46,000	\$ 46,000
<b>Total Cost</b>	<b>\$ 2,965,190</b>	<b>\$ 3,045,000</b>	<b>\$ 79,810</b>

## ORGANIZATION CHART



# STEPS IN THE COMPLAINT PROCEDURE

## 1. ACCESS TO INFORMATION ABOUT COMPLAINTS

Two Tribunal inquiry officers give callers basic information about human rights protection under the *Code*, the complaint process and other organisations providing assistance in human rights matters. If the call is not about a human rights matter, the inquiry officers may refer the caller to another agency. Complaint forms, guides and information sheets are available from the Tribunal, on its website, at government agents' offices, the Human Rights Clinic and other organisations.

## 2. COMPLAINT FILED

The first step in the complaint process is filing a complaint form.

## 3. COMPLAINT SCREENED

The complaint is assigned to a case manager who reviews it to see it is complete, appears to be within the jurisdiction of the Tribunal, and is within the six-month time limit.

If the complaint form is not complete, the case manager explains why and gives the complainant a limited time to complete it.

If it is clear that the complaint does not involve a provincial matter or a human rights matter covered by the *Code*, the case manager will recommend to the Chair that the complaint be rejected.

If it appears that the complaint was filed after the six-month time limit, submissions are sought and a Tribunal member decides whether the complaint is in time or, if not, whether the Tribunal should exercise its discretion to accept it.

## 4. COMPLAINT ACCEPTED AND SERVED

After the complaint is screened, the Tribunal notifies the parties that it has been accepted.

## 5. EARLY SETTLEMENT MEETING

The parties may meet with a Tribunal mediator who will help them resolve the complaint before any further steps are taken. Many complaints are settled at this stage.

## 6. RESPONSE TO COMPLAINT FILED

If the parties do not settle or do not want an early settlement meeting, the respondent files a response to the complaint form and may also file an application to defer or dismiss the complaint.

## 7. APPLICATION TO DEFER OR DISMISS

If a respondent applies to have the complaint deferred or dismissed, the Tribunal gets submissions from the parties and a Tribunal member makes a decision. Complaints may be deferred if there is another proceeding capable of appropriately dealing with the substance of the complaint. Complaints may be dismissed for the reasons provided in section 27(1) of the *Code*.

## 8. COMPLAINT STREAMED

Once a response to the complaint is filed and screened, the Tribunal decides whether it will follow the standard stream or be case-managed by a Tribunal member because of its complexity or other special characteristics.

## STEPS IN THE COMPLAINT PROCEDURE

### 9. SETTLEMENT MEETING

After the complaint is streamed, the parties have another opportunity to take part in a settlement meeting.

### 10. PRE-HEARING PREPARATION

If the complaint does not settle, the parties must prepare for the hearing and exchange relevant documents, witness lists, and positions on remedy. The case manager will telephone them several weeks before the hearing to check that they are ready.

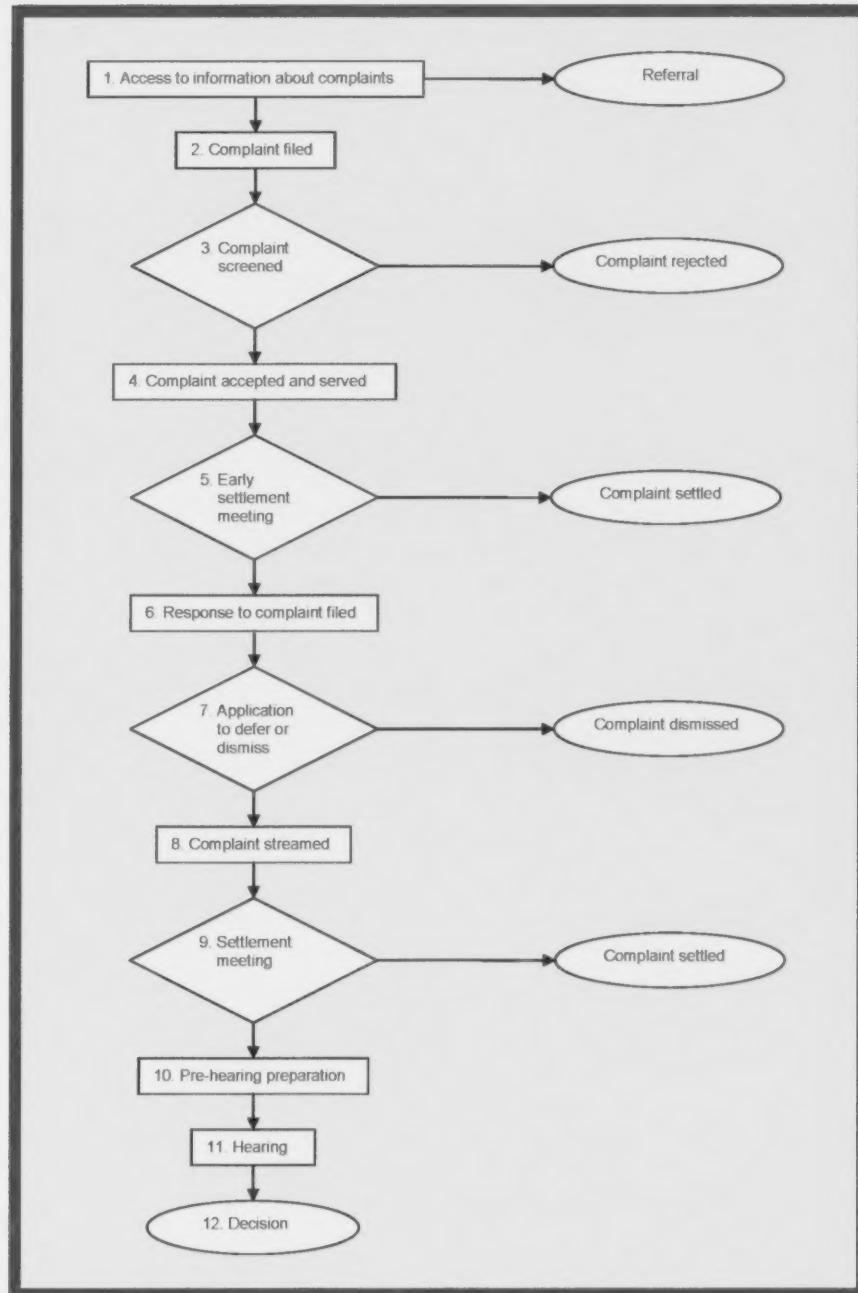
### 11. HEARING

Hearings are held before a Tribunal member or a panel of three members in exceptional cases. The parties attend in person and the hearing is open to the public. Evidence is given through witnesses, documents and other items. Each party has an opportunity to challenge the other party's evidence and to make arguments supporting their position.

### 12. DECISION

Based on the evidence, the arguments and the relevant law, the Tribunal member or panel decides whether the complainant has proven that discrimination occurred and, if so, whether the respondent has a defence to the discrimination. If the complaint is not justified, it is dismissed. If the complaint is justified, orders are made to remedy the discrimination.

# COMPLAINT FLOW CHART



# TRIBUNAL PUBLICATIONS

The following Guides, Information Sheets and Policies are available in English, Chinese and Punjabi on the Tribunal's website or by contacting the Tribunal. Please refer to the back cover of this report for contact information.

## GUIDES

- 1– The BC Human Rights Code and Tribunal
- 2– Making a Complaint and guide to completing a Complaint Form
- 3– Responding to a Complaint and guide to completing a Response to Complaint Form
- 4– The Settlement Meeting
- 5– Getting Ready for a Hearing

## INFORMATION SHEETS

- 1– Tribunal's Rules of Practice and Procedure
- 2– How to Name a Respondent
- 3– What is a Representative Complaint?
- 4– Time Limit for Filing a Complaint  
- Complainants
- 5– Time Limit for Filing a Complaint  
- Respondents
- 6– Tribunal Complaint Streams
- 7– Standard Stream Process - Complainants
- 8– Standard Stream Process - Respondents
- 9– How to Ask for an Expedited Hearing
- 10– How to Deliver Communications to Other Participants
- 11– What is Disclosure?
- 12– How to Make an Application
- 13– How to Add a Respondent
- 14– How to Add a Complainant
- 15– How to Make an Intervenor Application
- 16A–Applying to Dismiss a Complaint Under Section 27
- 16B–How to Respond to an Application to Dismiss a Complaint
- 17– How to Request an Extension of Time
- 18– How to Apply for an Adjournment of a Hearing
- 19– How to Require a Witness to Attend a Hearing

- 20– Complainant's Duty to Communicate with the Tribunal
- 21– How to Find Human Rights Decisions
- 22– Remedies at the Human Rights Tribunal
- 23– How to Seek Judicial Review
- 23A–Judicial Review: The Tribunal's Role
- 24– How to Obtain Documents From a Person or Organization Who is Not a Party to the Complaint
- 25– How to Enforce Your Order
- 26– Costs Because of Improper Conduct

## POLICIES

- Complainant's Duty to Communicate with the Tribunal
- Public Access and Media Policy
- Settlement Meeting
- Special Programs

# ADMINISTRATIVE STAFF

## ADMINISTRATIVE STAFF

### *Registrar / Legal Counsel*

Vikki Bell, Q.C.

### *Executive Coordinator*

Andrea Nash (partial year)  
Sheila O'Reilly (partial year)

### *Legal Counsel*

Jessica Connell  
Katherine Hardie (part-time)  
Denise Paluck (part-time)

### *Legal Secretary*

Mattie Kalicharan (partial year)  
Snezana Mitic (partial year)  
Nikki Mann (partial year)

### *Case Managers*

Pam Bygrave (partial year)  
Lindene Jervis  
Anne-Marie Kloss  
Lorne MacDonald  
Maureen Shields  
Margaret Sy  
Cristin Popa (partial year)  
Daniel Varnals (partial year)

### *Special Projects Coordinator*

Luke LaRue

### *Administrative Assistant*

Graeme Christopher (partial year - temp assignment)  
Paul Rondeau (partial year - temp assignment)

### *Inquiry Officers*

Cheryl Seguin  
Mattie Kalicharan (partial year)  
Carla Kennedy (partial year - temp assignment)

### *Reception*

Janet Mews

## NOTES

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